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ROLE OF JUDICIARY IN JUVENILE JUSTICE IN INDIA

Poojashri T

Assistant Professor of Law, Erode College of Law, Erode.

ABSTRACT

Children, the incredible assets and future development of the Country. The term Juvenile means youthful, immature, childish and a person who breaks the law. The Psychological and sociological aspects are to be considered and there is always a want of dealing with crime in a lawful society. Children mental, physical, and moral growth of the children and their safe and protected environment has to be entrusted in the society for the well-being of the country. In such a circumstance, judiciary playing a crucial role in dealing the juvenile cases and its application of law in disposal of cases arising under different circumstances in the society that can only be controlled, monitored, and guided by the Judiciary. The effective implementation of law in dealing with the juveniles and their rehabilitation and reformation through different methods and its necessary timely guidelines shows the positive efforts by the judiciary. For prompt monitoring of the same, judiciary is the appropriate platform to attain juvenile justice. There are various frameworks and amendments made by the judiciary, also by establishing exclusive Juvenile Justice Boards (JJB) Courts to deal with Juvenile delinquency. In the present paper the author made efforts to explain the role of judiciary in Juvenile Justice in India.

Keywords - Children, Juvenile, Justice, rehabilitation, reformation, Juvenile Justice Board, Courts, Juvenile delinquent

Introduction

Children are the indispensable source of our future nation. By taking the words of Pandit Jawaharlal Nehru, “Children of today will make the India of Tomorrow”. It is manifestly evident that the mental, physical, and moral growth of the child has a direct nexus with the development and diffusion of tradition, culture, discipline, and well-being of the society that extends to and forth the nation. Due to the escalating menace in child rearing, it reflects in affecting the moral, physical, and welfare of the country. Resultantly, those criminal psychological, and behavioral attitudes of the todays child and tomorrow’s youth introduced the term “juvenile” that has to be mandatorily regulated and properly scrutinized. The children under 18 years growing up in an atypical background cannot be entertained under the criminal justice system, which leads to injustice. Rehabilitation and reformation are the *Modus operandi* for treating Juvenile, engaging courts, and for addressing juvenile delinquency to attain moral, social, and judicial justice. On the other hand, child exploitation has numerous forms of abuse, such as criminal and sexual exploitation. Therefore, it is the primary legal as well as moral duty to extend its necessity to incorporate in the legislation and also proper scrutiny by the judiciary, which is essential to secure and safeguard child’s living environment.

Juvenile Justice (Care and Protection of Children) Act, 2015, Bharatiya Nyaya Sanhita (BNS) 2023, POCSO Act, 2012 and Indian Constitution deal with the establishment of courts and dealing with the juvenile justice process. The role of the judiciary in the Juvenile delinquency is essential for incorporating legislative framework by establishing courts which is essential to protect juvenile rights and enhancing moral, and societal views in case of the juveniles by considering the nations welfare and treating them with best interests.

The necessary of the above said regulation is not only within the country but also among the countries in turn result in the adoption of United Nations Convention on the Rights of the Child (UNCRC) by the General Assembly that came into force on 2nd September 1990 in which India becomes the party to the convention. There are several other convention and treaties dealt with the child rights and procedure to be followed to achieve Juvenile Justice globally.

Evolution

In India, Juvenile Justice is not a new concept in India. It can be traced back to colonial era when the British passed the Apprentices Act, 1850, for the apprenticeship of orphaned children which was further amended in 1867, dealt with the protection of child workers. The Bengal Children Act, 1891 was enacted for the establishment of juvenile courts.

During 1920, the establishment of the first juvenile Court was made in Bombay under Children Act, 1920. Subsequently, in 1986, the Juvenile Justice Act was replaced by The Children Act, 1920. Later, the amendment was made on 2000 which is main legal framework governing Juvenile Justice in India. Aligning the Juvenile Justice Act with the principles of United Nations Convention on the Rights of the Child which was taken over by the Juvenile Justice (Care and Protection of Children) Act, 2015.

After the enactment JJ Act, 2015, the previous acts was repealed. The act predominantly focuses on juvenile rehabilitation and reformation rather than punishment. It also aims to protect the children's rights with care and support lead to safe and healthy environment.

Child and Juvenile:

Child, a individual under eighteen years of age and the child under conflict of law is a Juvenile. The child between 16 to 18 years of age who is alleged to have committed a heinous offence i.e the punishment for the offence is seven years or more, he may be tried before the Children's Court as an adult. Under Bharatiya Nyaya Sanhita, 2023 defines child, who is an individual under twelve years of age. The Protection of Children from Sexual Offences (POCSO), 2012 defines a child who is less than

years of age.

The difference of age is fixed by the legislature in different acts, considering the child maturity of understanding and the circumstances of the incident. As these helps the judiciary in understanding the level of mental and physical capacity of the child in case of accusing and engaging in various crimes. By knowing their level of understanding, the juvenile has been referred to rehabilitation and reformation whatever the case may be. These also prevent child abuse by imposing rehabilitation and reformation rather than unlawful extraneous punishment in crime accusation under law as the child is of immature understanding. Therefore, the determination of age classification becomes obligatory.

Rights of the Child are as follows

Right to survival which includes, right to born, healthy living, minimum standards of nutritious food, clothing, shelter, a clean and safe environment and right to live with dignity,

- Right to be protected from sexual assault, dangerous drugs, and from neglect and right to participate.
- Right to emotional, mental, and physical development and right to relax and play. Also right to family identity to a child.
- Well being and development of children

in India was well established¹.

- Compulsory education of the age of 6 to 14 years of age². Inserted on 86th amendment, 2002 which is also reflected in UDHR³ and ICESCR⁴.
- Prohibition of Employment of Children in Factories. Children under the age of 14 years who is minor and engaged in any hazardous employment.⁵
- Health and strength of tender age of children, women, men are not forced by economic necessity to enter avocation unsuited to their age of strength⁶.
- It is the duty of every citizen either a parent or a guardian to provide opportunities to provide education for his child for 6-14 years of age as it is for the development and future of the country.⁷
- As per the Prohibition of Child Marriage Act, 2006, a female child who has not attained 18 years of age and male who has not attained 21 years of age.

- Under Apprentices Act, 1961, the children under 14 years of age was to prohibit apprenticeship and a person who is above 14 years of age can engage in apprentice if qualifies such physical and education standard.
- The imprisonment of the offenders are restricted who are less than 21 years of age.

Role of judiciary:

Earlier, there was no distinction between the juveniles and adults in the criminal courts. The punitive measures by the judiciary in juvenile matters culminates the harsh reality make the judiciary realize the want of separate process to deal exclusively with juvenile who are in conflict with laws, which result in establishment of Juvenile justice Board (JJB) in 2015 by installing the concept of rehabilitation and reformation and focusing on care, protection by considering the juvenile welfare to attain juvenile justice. Henceforth, there was a need for the process of reformation and rehabilitation rather than punitive. Juvenile Courts plays a vital role in treating and procedure for juvenile offenders. The juveniles who committed the heinous crimes were treated as adults between the age of 16-18 and tried in criminal courts.

The neglected and delinquents juvenile are placed in observation homes and special until

¹ Article 15 and Article 15(3) of the Indian Constitution

² Right to Education dealt in Article 21A of the Constitution of India

³ Article 26 of the UDHR

⁴ Article 13 and 14 of the ICESCR

⁵ Article 34 of the Indian Constitution

⁶ Article 39(e) deals with Directive Principles of State Policy in Constitution of India.

⁷ Article 51A(k) of the Indian Constitution

their decision are pending. All kinds of protection and facilities were given and they were managed by the State Governments.

Landmark Case Laws:

1. Sheela Barse & Another V. Union of India⁸

Held - It is a settled principle that children must not be prisoned like criminal adults, as it affects growth and development of children .

2. Pratap Singh V. State of Jharkand⁹

Held - The rules of Union Nations Standard Minimum Rules for the Administration of juvenile Justice 1985 are applied to juveniles without any discrimination.¹⁰

3. Shah Nawaz V. State of U.P and Another¹¹

Held - The Juvenile age is determined under 1(3)(a) by giving first preference to matriculation or equivalent certificate. Lack of the same, the age present in the school first attended birth certificate is taken into account and in its absence, the birth certificate issued by the Corporation or a Panchayat. In case of lacks of the above certificates, the medical opinion can be obtained.

4. Jitendra Sigh V. State of UP¹²

The following are the guidelines issued by the court:

- The Magistrate to record reasons of the juvenile accused at the earliest.
- Such juvenile is not necessary to be aware of socio economic factors laws.
- The Magistrate has the onus to determine the juvenile and the juvenile cannot claim it.
- The parents or guardians are involved in the juvenile legal process.

5. Delhi Gang Rape Case - 2012,

The Supreme Court in its landmark judgement held that Juvenile below the age of 18 can be treated as an adult in case of committing a heinous offence. The amendment was also made in the Juvenile Justice Board 2015, the juvenile under 18 years of age but above 16 years of age will be treated as an adult offender.

6. Mercedes Hit and Run Case, 2016

Held - The SC reversed the judgment of the Delhi High Court by treating a minor who was 4 days short of being 18 years old, the accused of killing a 32 year old women in hit and run case as a juvenile.

⁸ (1986) 3 SCC 596

⁹ AIR 2005 SUPREME COURT 2731

¹⁰ Also known as Beijing Rules

¹¹ AIR 2011 SC 3107

¹² Criminal Appeal No. 763 of 2003

7. M.C. Mehta V. UOI¹³

The committee was formed and directed the State of Tamil Nadu in taking necessary steps not to employ children in hazardous industries and must have a separate premise not more than 6 hours. Recreation, transport and education facilities to be given and also to establish a children's welfare national commission for abolishing of child labor.

8. Thirumoorthy V. State represented by the Inspector of Police¹⁴

It was held that this case emphasize the judiciary's unwavering commitment to concentrate on uphold children's rights, ensuring that justice is served in a manner that fosters rehabilitation, protection, and societal reintegration.

Conclusion

Juvenile delinquency is always a threat to the world where the judiciary is imposing its measures to safeguard children from the vicious persons by encouraging them with moral and cultural values and also to use their mind in a optimistic way and to provide secure future. Although various steps has been taken by the government by enacting laws and regulations along with the judiciary to reduce juvenile crime, it sometimes becomes ineffective and

unfulfilled.

The Juvenile Justice Board are established to exclusively deal the juvenile crimes and treat them by referring to rehabilitation and reformation homes rather than giving punishments by considering their age. The same has a enormous drawback which has to be properly regulated and monitored by the judiciary. As the juvenile in such homes, has to be equipped and provided with education, to make them loyal citizens. Also develop ethical, social, spiritual principles, and legal aspects which is essential for child development. It has to be accepted that the parents or guardians of the children are unaware the mental, and emotional health of the child where they need guide to treating and regulate them with peaceful manner otherwise the child becomes neglected after certain extent. Therefore, in this case, the judiciary being a responsible body comes into play when child becomes neglected because to safeguard and protect the above prospect and concentrates on child care, safety, development, and protection at all levels of social life.

¹³ 1996 6 (SCC) 756

¹⁴ 2024 SCC Online SC 375